



U.S. Department of Energy's
Office of Science

Foreign National Visitors
&
Export Control
“An Historical Overview”

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(Bill)



Emergence of Regulations on Foreign Nationals

- The lack of regulation became apparent at the time of the Iranian hostage crisis in 1979
- New regulations came out in 1983 and were reviewed in 1985 and 1988
- DOE became a focus in 1988 (GAO Audit)
- After WTC bombing in 1993 a task force was formed to create an electronic monitoring system
- Illegal Immigration Reform and Immigrant Responsibility Act of 1996
- USA Patriot Act of 2001



October 1988 GAO Report

Nuclear Nonproliferation: Major Weaknesses in Foreign Visitor Controls at Weapons Laboratories. (RCED-89-31, October 1988)

As a result of recommendations from this report the Department revised DOE Order 1240.2 and implemented the Visits and Assignments Management System (VAMS).



DOE Order 1240.2A, January 19, 1988, “Unclassified Visits and Assignments by Foreign Nationals

- The concerns and focus were primarily on visits by sensitive country nationals to “Weapons” laboratories. As such, the order included provisions to provide “exclusions” from the reporting requirements for the non-weapons laboratories whose work was open source research.
- Initially the Order identified the laboratories and other facilities of concern as “Sensitive Facilities,” and outlined the specific reporting requirements. As a result of the easing of relations with many countries at the end of the cold war, the Order was changed.



DOE Order 1240.2B, August 21, 1992 w/Change 1, September 3, 1992.

Primary changes:

- Extended the time frame for a visit from 7 to 30 days.
- Eliminated the requirements for indices checks for non-sensitive country nationals. It left the option to request indices checks in some circumstances.
- Other minor changes to facilitate repetitive visits and exception requests.

A task force was established to rewrite DOE Order 1240.2B. During meetings it was clear that some modifications were needed immediately while the task force was laboring over more controversial proposals. The task force agreed to recommend the immediate changes in a notice.



DOE Notice 1240.2, November 29, 1993 was issued and modified the order as follows:

- The term “sensitive facility” was replaced with “security area” to recognize establishment of islands of security concerns. This allowed an opening up of many of the areas at the weapons laboratories. (Property Protection Areas (PPA) were not to be considered as “Security Areas” for the purpose of this Order.)
- The task force continued to work and attempted to include in the proposed new order a provision that PPAs would not be subject to the reporting requirements. All program offices agreed with a lone non-concurrence from the Office of Counterintelligence.
- On November 30, 1994, DOE Notice 1240.2 was extended due to the deadlock.
- On March 5, 1995, the sensitive country list was modified



September 1996 GAO Audit

- In September 1996, a GAO audit examined foreign visits to weapons laboratories with a focus on the recommendations that they made in the 1988 report:
 - **DOE Security: Information on Foreign Visitors to the Weapons Laboratories**, testimony by Bernice Steinhardt, Associate Director, Energy, Resources, and Sciences Issues, before the Military Procurement Subcommittee, House Committee on National Security. (RCED-96-260, Sept. 26, 1996)



More GAO Reports Issued

- **Department of Energy: DOE Needs to Improve Controls Over Foreign Visitors to Weapons Laboratories.** (RCED-97-229, Sept. 25, 1997)
- **Department of Energy: DOE Needs To Improve Controls Over Foreign Visitors To Its Weapons Laboratories,** by Keith O. Fultz, Assistant Comptroller General, before the House Select Committee on U.S. National Security and Military/Commercial Concerns with the People's Republic of China. (T-RCED-99-28, Oct. 14, 1998)
- **Department of Energy: Problems in DOE's Foreign Visitor Program Persist,** by Keith O. Fultz, Assistant Comptroller General, before the Military Procurement Subcommittee, House Committee on National Security. (T-RCED-99-19, Oct. 6, 1998)



Evolution of Policy 142.1 and Notice 142.1

- On March 15, 1999, the Albuquerque Operations Office modified and eliminated the exemptions in PPAs at laboratories under their cognizance
- On April 1, 1999, Secretary Richardson extended these modifications to all DOE facilities except the unclassified laboratories. (NREL, SLAC, FNAL, PPPL, TJNAF & AMES; however, LBNL was not included)
- On July 14, 1999, Secretary Richardson issued Policy 142.1 and Notice 142.1 and rescinded DOE O 1240.2B. (Excluded all 7 previously exempted labs, to include LBNL)



Congressionally Mandated IG Audits of Export Controls

- Public Law 106-65, National Defense Authorization Act for FY 2000, section 1402, requires the President to submit an annual report to Congress, by March 30 of each year through 2007, on the transfer of militarily sensitive technology to countries and entities of concern.
- The National Defense Authorization Act further requires that the Inspectors General of the Departments of Commerce, Defense, Energy, and State, in consultation with the Director of Central Intelligence and the Director of the Federal Bureau of Investigation, conduct an annual review of policies and procedures of the U.S. Government with respect to their adequacy to prevent export of sensitive technologies and technical information to countries and entities of concern.
- An amendment to section 1402(b), in section 1204 of the National Defense Authorization Act for FY 2001, further requires that the Inspectors General include in the annual report the status or disposition of recommendations set forth in previous annual reports under section 1402.



IG Audits of Export Controls in accordance with Section 1402

- FY- 2001 - an interagency review of Federal agency compliance with the deemed export licensing requirements contained in the Export Administration Regulations and the International Traffic in Arms Regulations.
- FY - 2002 - an interagency review to assess policies and procedures for developing, maintaining, and revising the Commerce Control List and the U.S. Munitions List.
- FY - 2003 - an interagency review of Federal automation programs that support the export licensing and review process.
- FY - 2004 - the requirement was to conduct an Interagency Inspection of Contractor and University Adherence to Deemed Export Controls. (AMES Lab and General Atomics)



External Reviews of DOE that Addressed Foreign National Issues

- **“Cox Report”**, House Report 105-851, Report of the Select Committee on U.S. National Security and Military/Commercial Concerns with the People’s Republic of China, **January 3, 1999.**
- **Secretary of Energy Advisory Board (SEAB)** Report of the Working Group on Foreign Visits and Assignments , dated **June 8, 1999**
- **“Rudman Report”** Science at its Best - Security at its Worst, President’s Foreign Intelligence Advisory Board, **June 1999.**
- **“Redmond Panel”**, The House Permanent Select Committee On Intelligence Report Of The Redmond Panel; “Improving Counterintelligence Capabilities At The Department Of Energy And The Los Alamos, Sandia, and Lawrence Livermore National Laboratories”, Permanent Select Committee on Intelligence, **June 21, 2000**
- **“Hamre Commission”**, Commission on Science and Security, Science and Security in the 21st Century A Report to the Secretary of Energy on the Department of Energy Laboratories, **April 2002.**



IG Audit: The Department's Unclassified Foreign Visits and Assignments Program

The administration of the foreign visits and assignments program suffered because of:

- A lack of specific policy guidance
- Problems with local implementation
- A lack of clear and quantifiable performance measures



IG Audit: Safeguards Over Sensitive Technology

The Departmental and other agencies have issued a variety of controls that had a bearing on the protection of sensitive technologies. However, the laboratories did not consistently apply the controls as they relate to:

- Sensitive technology lists that should be consulted;
- The manner in which authorizations for persons from sensitive countries to work on CRADAs or WFO projects should be obtained and documented;
- Determinations regarding foreign involvement;
- Approval of security classification forms prior to entering into agreements; and,
- Counterintelligence reviews of CRADAs



IG Audit: Contractor Compliance with Deemed Export Controls

- We determined that current Energy policy for unclassified foreign visits and assignments was incomplete and did not specify the responsibilities of those contractor employees charged with hosting foreign nationals.
- We also determined there was inconsistent application of Energy export control guidance regarding access by foreign nationals to sensitive technology.



IG Audit: Office of Science (SC) Security Procedures.

- The Office of Inspector General is currently conducting an audit of the Office of Science (SC) Security Procedures. The audit will focus on whether SC has established and implemented effective safeguards and security controls at SC sites.



Energy Systems Acquisition Advisory Board (ESAAB)

- The Department has undertaken several initiatives to implement Acquisition reform for major systems in support of the Department's mission.
- The ESAAB was established to advise the Deputy Secretary of Energy on major resource allocations in order to build successful and balanced programs, identify and resolve issues, and make sound and timely recommendations to facilitate secretarial decision-making.



Energy Systems Acquisition Advisory Board (ESAAB)

- Program Secretarial Officer's conduct ESAAB reviews for all major systems projects based on a project's critical decision/baseline change requirements.
- The Office of Science has included security issues in the ESAAB briefing decision and protocol.
- One of the security considerations is the sensitivity of the technology and if an export control reviews has been completed.



Energy Systems Acquisition Advisory Board (ESAAB)

Recent Office of Science ESAAB reviews:

- CD-0 for B-Tev Project (FNAL)
- CD-2 for NCSX Project (PPPL)
- CD-1 for SING Project (ORNL)
- CD-2 for SLI Project: BNL Research Support Building, Phase I



Prologue – SC Sites will have a Foreign Visits and Assignment Program

- The Office of Science is committed to implementation of a Graded Approach
- All SC sites will conduct appropriate export control reviews
- All sites have an obligation to ensure foreign nationals on their sites are in a lawful status and that access to sensitive technology is controlled
- The DOE FV&A Programs will continue to be audited by GAO, IG and OA



William E. Nay (Bill)

“I’m from the Government, and I am here to
HELP.”

Any Questions?

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